

Honorable Judge Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

U.S. Bank National Association,
as securities intermediary,

Plaintiff,

v.

John Hancock Life Insurance Company
(U.S.A.),

Defendant.

NO. C10-1229 TSZ

AMENDED COMPLAINT AND
JURY DEMAND

COMES NOW Plaintiff U.S. Bank National Association, in its representative capacity as securities intermediary ("U.S. Bank"), by and through its attorneys, Wollmuth Maher & Deutsch LLP and Stafford Frey Cooper, P.C., and alleges upon knowledge as to its own actions and upon information and belief as to all other matters as follows:

I. THE PARTIES

1. U.S. Bank National Association is a national banking association with its principal corporate trust office in the State of Minnesota, and in its representative capacity as securities intermediary is the registered owner of a life insurance policy number UL 1200962 issued by defendant on September 1, 2004 (the "Policy") with

AMENDED COMPLAINT AND JURY DEMAND - 1

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1 respect to the life of a non-party to this litigation (the "Insured Person"). At the time of the
2 issuance of the Policy, the Insured Person was a resident of the State of Washington, and the
3 original owner of the Policy (the "Original Policy Owner") was a limited liability company
4 formed in the State of Washington with its principal place of business in the State of
5 Washington.

6 2. Upon information and belief, defendant John Hancock Life Insurance
7 Company (U.S.A.) ("John Hancock"), a Michigan corporation with its principal place of
8 business in Boston, Massachusetts, is licensed in the State of Washington and is
9 engaged in the business of issuing life insurance policies throughout the United States.

10 II. JURISDICTION AND VENUE

11 3. Jurisdiction is properly before this Court pursuant to 28 U.S.C. § 1332(a) in
12 that complete diversity exists between the parties and the amount in controversy
13 exceeds \$75,000.

14 4. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(a) in that
15 a substantial part of the events or omissions giving rise to claim occurred, or a
16 substantial part of the property that is the subject of the action is situated, in this District.

17 III. FACTUAL BACKGROUND

18 5. This action arises out of John Hancock's wrongful cancellation of the
19 Policy after accepting substantial premiums for approximately four and a half years after
20 the Policy's inception on September 1, 2004. Since U.S. Bank rightfully acquired
21 ownership and became the designated beneficiary of the Policy on or about December
22 28, 2007 John Hancock has received several hundreds of thousands of dollars in Policy
23 payments. Nevertheless, John Hancock has taken the position that it had the right to

1 cancel the Policy—which had a death benefit of \$10 million at the time of cancellation—
2 because of an approximately \$6,572.00 shortfall in one Policy payment. At the time of
3 the cancellation, U.S. Bank was not aware that John Hancock claimed that U.S. Bank
4 was not current in its payment obligations to John Hancock, and it was not aware that
5 the Policy had been placed into a grace period, which as explained below is the
6 contractually mandated 61-day cure period that John Hancock must wait before
7 canceling the Policy for a failure to pay. However, John Hancock's own
8 misrepresentations and omissions caused the plaintiff to fail to pay the amounts claimed
9 by John Hancock within the time frame demanded by John Hancock, and were the
10 reason why U.S. Bank was unaware that the Policy was in a grace period. Once
11 plaintiff was made aware by John Hancock of the claimed shortfall, plaintiff promptly
12 tendered payment of the amount claimed, and such amount was kept for months by
13 John Hancock, only to be ultimately refused by it. John Hancock's failure to
14 acknowledge its own culpability in U.S. Bank's initial failure to remit the additional *de*
15 *minimis* amount claimed to be owed, and its refusal to accept prompt payment of the
16 claimed amount upon becoming aware of the alleged shortfall, were both done in bad
17 faith.

18 6. On or about August 27, 2004, the Original Policy Owner submitted an
19 application for insurance upon the life of the Insured Person, who then was a 79-year
20 old male and a resident of the State of Washington. The application was for a Basic
21 Sum Insured of \$3,300,000 and an Additional Sum Insured of \$3,300,000, with the latter
22 amount increasing by \$850,000 each year for the next five (5) years. (All capitalized
23 terms used but not defined herein are intended to be as used or defined in the Policy.)

1 Upon information and belief, the application was brokered in the State of Washington
2 and was sent to John Hancock from the State of Washington.

3 7. On September 1, 2004, John Hancock issued the Policy, with a Basic
4 Sum Insured of \$3,300,000 and an Additional Sum Insured of \$3,300,000, so that the
5 Total Sum Insured at that time was \$6,600,000. Because the Additional Sum Insured
6 increased by \$850,000 for each of the first five years, the Total Sum Insured under the
7 Policy on September 1, 2008 was \$10 million. But for John Hancock's wrongful conduct
8 as described herein, the Total Sum Insured under the Policy on September 1, 2009
9 should have been \$10,850,000.

10 8. On or about December 28, 2007, the Original Policy Owner transferred its
11 ownership interest in the Policy to Coventry First LLC ('Coventry') "together with its
12 successors, assigns and nominees" and Coventry then transferred the Policy to U.S.
13 Bank on the same day. Thereafter, John Hancock acknowledged U.S. Bank to be the
14 owner and beneficiary of the Policy, and began communicating with U.S. Bank, as
15 owner, and with Coventry, as servicer (the "Servicer"), with respect to the Policy.

16 9. At the time that U.S. Bank acquired ownership of the Policy, it had a
17 significant Account Value and Surrender Value. In April 2008, as permitted by Section
18 10 of the Policy, U.S. Bank requested that John Hancock provide a loan to U.S. Bank in
19 an amount equal to "the maximum available . . . from the cash value of the policy." U.S.
20 Bank submitted its request using loan forms provided by John Hancock. Shortly
21 thereafter, John Hancock sent U.S. Bank a check in the amount of \$862,516.60 as loan
22 proceeds. After U.S. Bank received such loan proceeds, periodic Policy payments
23 continued as required in order to maintain the Policy in force.

1 **A. The Policy's Requirement That John Hancock Provide Notice of Policy**
 2 **Default**

3 10. Section 8 of the Policy provides that on each Grace Period Testing Date
 4 (defined in Section 3 of the Policy, captioned "Definitions," as essentially, every quarter),
 5 John Hancock performs a calculation to determine "if the total of all unpaid Section 9
 6 charges as of such date are greater than the Surrender Value as of such date." Policy §
 7 8. If so, a 'Policy Default' occurs. Once a "Policy Default" occurs:

8 An amount at least equal to the Default Payment must be received within
 9 a grace period of 61 days after the date of default. We will send notice to
 10 your last known address and to the last known address of any assignee of
 11 record with us at least 31 days before the end of this grace period
 12 specifying whether there is . . . a Policy Default and the Default Payment
 13 which you must make to cure the default.

14 Policy § 8 (emphasis added). (A copy of the Policy, without the initial application
 15 appended thereto, is annexed hereto as Exhibit A.)

16 11. Thus, if John Hancock performs the calculation required on a Grace
 17 Period Testing Date and determines that a Policy Default has occurred, John Hancock
 18 is required to send written notice to the owner of the Policy (1) that a "Policy Default" has
 19 occurred, and (2) that a specific amount of money, referred to as the "Default Payment,"
 20 must be received by John Hancock within 61 days to prevent the Policy from Lapsing.
 21 John Hancock is required to send this written notice at least 31 days before the Policy is
 22 scheduled to Lapse. The obvious intent of this provision is to prevent inadvertent
 23 Lapses of the Policy and to allow the Owner an opportunity to cure a failure to pay
 amounts owed under the Policy.

B. John Hancock's Failure to Notify U.S. Bank of the Purported Policy Default

12. John Hancock cancelled the Policy on or about May 1, 2009, claiming that U.S. Bank was in default and that cancellation was permissible because one of the payments made under the Policy was short by \$6,572.00 and because U.S. Bank failed to cure that shortfall within the contractually mandated grace period. However, U.S. Bank never received written notice from John Hancock that the Policy was in Policy Default, and would Lapse if additional payments were not made. U.S. Bank never received such notice because, upon information and belief, John Hancock never provided U.S. Bank with written notice that the Policy was in Policy Default and would Lapse if additional payments were not made. Furthermore, despite having opportunity to do so, John Hancock failed to even verbally or informally apprise plaintiff of the Policy Default and impending cancellation. Instead, John Hancock fielded an inquiry about recent payments without noting the claimed shortfall and continued to accept and process payments made under the Policy during the grace period without notifying U.S. Bank that those payments did not satisfy the claimed shortfall.

13. On or about February 9, 2009, in a telephone conversation, John Hancock confirmed to the Servicer that it had received a payment of \$5,420.14 made in December 2008. In that conversation, John Hancock did not state that the Policy was in Policy Default as of that date, that the Policy was at risk of a Policy Default on March 1, 2009, or that any further payment needed to be made in order to maintain coverage.

14. On or about February 25, 2009, a check in the amount of \$74,524.22 was mailed to John Hancock with respect to the Policy.

1 15. On March 1, 2009, which according to John Hancock was a Grace Period
2 Testing Date, John Hancock claims to have performed the calculation referenced in
3 paragraph 10 above and determined that the Policy was approximately \$800.00 short of
4 the amount required to prevent a Policy Default.

5 16. If the Policy was in Policy Default as of March 1, 2009, John Hancock was
6 required under Section 8 of the Policy (quoted in paragraph 10 above) to provide notice
7 of such Policy Default to U.S. Bank in order to permit U.S. Bank to cure such alleged
8 Policy Default, and to include information apprising U.S. Bank of the amount of such
9 'Default Payment which you must make to cure the default.' Policy § 8. John Hancock
10 was obligated to provide such notice by April 1, 2009 (i.e., 31 days before the policy
11 allegedly would Lapse), and U.S. Bank was required to make the Default Payment by
12 May 1, 2009 (i.e., 61 days from the date of alleged Policy Default). However, U.S. Bank
13 never received such notice. Upon information and belief, John Hancock never sent
14 U.S. Bank such notice.

15 17. On or about March 4, 2009, John Hancock cashed the \$74,524.22 check
16 with respect to the Policy. This amount is approximately \$6,572 less than the amount
17 John Hancock subsequently claimed U.S. Bank was required to pay in order to cure the
18 alleged Policy Default. John Hancock did not inform U.S. Bank that, in John Hancock's
19 view, this payment was insufficient to satisfy U.S. Bank's payment obligations under the
20 terms of the Policy.

21 18. On or about March 9, 2009, the Servicer called John Hancock regarding
22 the Policy. During this telephone call, John Hancock did not advise the Servicer that
23 there had been a Policy Default as of March 1, 2009, or that the Policy was in danger of

1 Lapse if a Default Payment was not made. Similarly, John Hancock did not inform the
2 Servicer that a payment of \$6,572.00 was needed to prevent the Policy from lapsing.
3 Instead, John Hancock only advised the Servicer that the Policy maintained a positive
4 Surrender Value of \$67,747.80. By doing so, John Hancock affirmatively misled the
5 Servicer into believing that there were no issues regarding the Policy.

6 19. On or about April 29, 2009, John Hancock sent U.S. Bank a "Notice of
7 Planned Premium" indicating a "Planned Premium" of \$111,447.25, and a "Planned
8 Premium Date" of April 29, 2009.¹ (A copy of the Notice of Planned Premium is annexed
9 hereto as Exhibit B.) This notice contains no indication that John Hancock deemed the
10 Policy to be in Policy Default as of March 1, 2009, or that the Policy was in danger of
11 Lapse if a Default Payment was not made. Of course, if a Policy Default had occurred
12 on March 1, 2009, John Hancock should have already formally provided such notice to
13 U.S. Bank in writing by April 1, 2009.

14 20. In fact, throughout the period from March 1, 2009 to May 1, 2009, upon
15 information and belief, John Hancock never provided U.S. Bank with written notice that
16 the Policy was in Policy Default and would Lapse if additional payments were not made.
17 Throughout that same period, U.S. Bank never received written notice from John
18 Hancock that the Policy was in Policy Default and would Lapse if additional payments
19 were not made.

20
21
22
23 ¹ Under Section 3 of the Policy, the term "'Planned Premium' means the premium that is
selected in the application for the policy which is intended to be paid on a regular modal basis."

1 **C. John Hancock's Lapse Notice**

2 21. In early May 2009, John Hancock sent a "Lapse Notice" dated May 1, 2009
 3 to U.S. Bank (the "Lapse Notice"), stating that the Policy "has terminated due to non-
 4 payment of premium due on March 11, 2009." (A copy of the Lapse Notice is annexed
 5 hereto as Exhibit C.) U.S. Bank received no prior notice of any Policy Default and no
 6 prior notice that John Hancock intended to terminate the Policy if additional payments
 7 were not made. Nor had U.S. Bank received any prior notice of a premium due on
 8 March 11, 2009.

9 22. John Hancock's Lapse Notice contained incorrect and materially
 10 misleading information, and thus was a nullity. If the Lapse Notice was correct that a
 11 premium had been due, but not paid, on March 11, 2009, then under Section 8 of the
 12 Policy (quoted in paragraph 10 above) U.S. Bank had 61 days from that date—or until
 13 May 11, 2009—to make a Default Payment and prevent the Policy from lapsing.
 14 However, because John Hancock's Lapse Notice asserted that the Policy lapsed on May
 15 1, 2009, the information contained in the Lapse Notice was incorrect. In effect, John
 16 Hancock deprived U.S. Bank of at least ten (10) days of grace period, a period of time
 17 during which U.S. Bank could have paid the amount John Hancock claimed was due. In
 18 fact, had John Hancock provided proper and accurate information, and correctly
 19 informed U.S. Bank that due to the March 1, 2009 alleged shortfall the Policy was going
 20 to Lapse on May 11, 2009, U.S. Bank would have been able to provide in a timely
 21 fashion the payment that John Hancock demanded.

1 **D. Subsequent Communications With John Hancock Regarding The Lapse**
 2 **Notice**

3 23. Immediately upon receiving the "Lapse Notice" in May 2009, the Servicer
 4 contacted John Hancock on or about May 11, 2009, questioned the propriety of the
 5 Lapse Notice and advised John Hancock that U.S. Bank had not received any prior
 6 notice of a Policy Default. In their conversations with the Servicer, the John Hancock
 7 representatives themselves seemed confused as to why the Policy would have lapsed,
 8 but disingenuously stated that they could not provide a hard copy of any prior notice of
 9 Policy Default because the Policy had lapsed. In other words, John Hancock claimed
 10 on May 11, 2009, that because the Policy allegedly lapsed only ten days earlier, John
 11 Hancock was unable to access a hard copy of any prior notice of Policy Default. Upon
 12 information and belief, John Hancock was unable to access any hard copy of any prior
 13 notice of Policy Default because no such notice letter existed, or had been sent.

14 24. On or about May 11, 2009, John Hancock faxed the Servicer what John
 15 Hancock contended were internal records of a purported notice having been generated
 16 by John Hancock and sent to U.S. Bank. (A copy of these internal records, as faxed by
 17 John Hancock on May 11, 2009, is annexed hereto as Exhibit D.) This document
 18 appeared to be a screen shot from John Hancock's computer system, purportedly dated
 19 as of February 2, 2009 (see upper left-hand corner of document, fourth line), indicating
 20 a "Planned Premium Date" of March 12, 2009, a "Planned Premium" of \$111,447.25, and a
 21 "Required Premium" of \$81,095.58, and also contained, inter alia, the following
 22 statement: "Should you decide to pay less than your Planned Payment, a minimum
 23 payment of \$81,095.58 is required to prevent your policy from lapsing on 05/01/09."

1 (The purported notice letter that John Hancock claimed was generated by this internal
2 “screen shot” document will be referred to hereafter as the “First Purported Notice of
3 Policy Default.”) Upon information and belief, John Hancock never sent to U.S. Bank the
4 First Purported Notice of Policy Default. U.S. Bank never received the First Purported
5 Notice of Policy Default.

6 25. Even assuming arguendo that the First Purported Notice of Policy Default
7 had been sent by John Hancock on or about February 2, 2009, and received by U.S.
8 Bank sometime thereafter, it did not comply with John Hancock’s obligations under
9 Section 8 of the Policy. As quoted in paragraph 10 above, Section 8 of the Policy
10 requires notice of a “Policy Default and the Default Payment which you must make to
11 cure the default.” Policy § 8. The First Purported Notice of Policy Default did not
12 reference the terms “Policy Default” or “Default Payment,” did not contend that a Policy
13 Default had already occurred and did not provide notice of a “Default Payment which you
14 must make to cure the default.” In other words, because the First Purported Notice of
15 Policy Default (assuming it was sent at all, which U.S. Bank disputes) was sent prior to
16 any purported Policy Default, it could not possibly satisfy John Hancock’s obligation
17 under Section 8 of the Policy to provide U.S. Bank with notice that a Policy Default had
18 occurred.

19 26. After a number of erroneous and dissembling explanations in May 2009
20 from John Hancock regarding why it contended the Policy had lapsed and what Default
21 Notice had been sent to U.S. Bank, a John Hancock supervisor stated that there was a
22 large loan out on this Policy and that John Hancock would not allow the Policy to be
23 reinstated without re-underwriting. In other words, although John Hancock issued a

1 Policy in 2004 upon the life of a then 79-year old male, it wanted another opportunity to
 2 re-underwrite—and perhaps decline—the Policy now that the Insured Person was almost
 3 84 years old. And although loans against the Policy are expressly contemplated and
 4 permitted under Section 10 of the Policy, John Hancock apparently treats owners of
 5 insurance policies who exercise their rights to obtain loans under such policies
 6 differently from other policyholders.

7 E. **John Hancock's Receipt of Payments After The Purported Policy Default**
 8 **and John Hancock's New Position on Its Notice of Policy Default**

9 27. Because in May 2009, John Hancock still contended that an additional
 10 payment of approximately \$6,572.00 was required in order to prevent the Policy from
 11 lapsing, such amount was wired to John Hancock on or about May 27, 2009.

12 28. On or about May 27, 2009, \$111,447.25 was also wired to John Hancock,
 13 in respect of John Hancock's Notice of Planned Premium dated April 29, 2009.

14 29. On or about June 1, 2009, a check in the amount of \$74,837.05 was
 15 mailed to John Hancock in respect of the Policy, and John Hancock cashed that check
 16 on or about June 8, 2009.

17 30. On or about June 2, 2009, counsel for the Servicer wrote to John Hancock
 18 stating that "John Hancock's purported effort to terminate the Policy contravenes the
 19 Policy and constitutes bad faith." (A copy of this letter, dated June 2, 2009 is annexed
 20 hereto as Exhibit E.) The Servicer's counsel pointed out, inter alia, that "John Hancock
 21 failed to provide notice required by [Section 8] of the Policy," and that "John Hancock
 22 provided misinformation concerning the status of the Policy." *Id.* at p.1
 23

1 31. John Hancock took almost two months to respond to the letter of counsel
2 for the Servicer. Despite having been placed on clear notice of its breaches of contract,
3 bad faith and other wrongdoing, John Hancock refused to change its prior position that
4 the Policy had lapsed on May 1, 2009. However, by letter dated August 26, 2009, John
5 Hancock now claimed for the first time that "a written notification of this Policy Default
6 was sent, on or around March 6, 2009, to U.S. Bank. . . ." August 26, 2009 Letter from
7 John Hancock, at p. 1 (emphasis added). (A copy of this letter, dated August 26, 2009,
8 is annexed hereto as Exhibit F.) In other words, John Hancock now had completely
9 abandoned its prior position that the First Purported Notice of Policy Default (i.e., the
10 purported notice generated by the February 2, 2009 "screen shot") constituted the notice
11 required under Section 8 of the Policy, and now was claiming that some new,
12 unspecified notice dated March 6, 2009 (the "Second Purported Notice of Policy Default")
13 constituted the notice required by Section 8 of the Policy.

14 32. To this day, John Hancock has not provided U.S. Bank with a copy of the
15 Second Purported Notice of Policy Default. U.S. Bank never received the Second
16 Purported Notice of Policy Default. Upon information and belief, John Hancock never
17 sent to U.S. Bank the Second Purported Notice of Policy Default.

18 33. Despite having received substantial payments under the Policy in late May
19 and early June 2009, John Hancock's August 26, 2009 letter sought to excuse its
20 acceptance and retention of such funds on the following grounds: "The payments
21 directed to us after May 1, 2009 had been held by us in suspense pending what we had
22 understood would be a request for reinstatement. With no reinstatement now pending,
23 those payments have been returned. The owner will also be receiving shortly the

1 remaining Surrender Value of the Policy.” See Exh. F hereto at p. 2. These statements
 2 by John Hancock were without basis and intended to provide some excuse for its prior
 3 acceptance and retention of payments under the Policy.

4 34. On or about August 24, 2009, a check in the amount of \$96,847.53 was
 5 mailed to John Hancock with respect to the Policy. In early September 2009, John
 6 Hancock returned the \$96,847.53 check to U.S. Bank. On or about August 26, 2009,
 7 U.S. Bank received a check from John Hancock for \$48,916.12 with respect to the
 8 Policy. U.S. Bank has not cashed that check. John Hancock never explained what it
 9 did with the substantial payments made with respect to the Policy in late May and early
 10 June 2009.

11 **IV. FIRST CAUSE OF ACTION – BREACH OF CONTRACT**

12 35. Plaintiff incorporates by reference all of the allegations set forth in
 13 paragraphs 1 through 34 as though fully set forth herein.

14 36. Plaintiff duly performed all of the obligations imposed on it under the
 15 Policy and at all relevant times remained ready, willing and able to continue doing so.

16 37. Pursuant to Section 8 of the Policy, defendant was obligated to provide,
 17 inter alia, notice to plaintiff of (a) a Policy Default, and (b) a Default Payment required to
 18 cure any Policy Default under the Policy.

19 38. Defendant breached the Policy by failing to provide the notices required
 20 under the Policy, and by providing inaccurate, incomplete and misleading information in
 21 its communications with respect to the Policy.

22 39. If the notices and information had been provided to plaintiff as required by
 23 the Policy, plaintiff would have made the applicable Default Payment within the time

1 frame demanded by plaintiff and would not be subject to plaintiff's contention that the
2 Policy lapsed.

3 40. Defendant also breached the Policy by canceling the Policy when it had
4 no right to do so.

5 41. Defendant's breaches are material.

6 42. Defendant's breaches have caused plaintiff to sustain damages in an
7 amount to be proven at trial, but in excess of the jurisdictional minimum required in this
8 Court.

9 **V. SECOND CAUSE OF ACTION – BREACH OF THE COVENANT OF GOOD**
10 **FAITH AND FAIR DEALING**

11 43. Plaintiff incorporates by reference all of the allegations set forth in
12 paragraphs 1 through 42 as though fully set forth herein.

13 44. At all relevant times herein, defendant's termination of coverage, failure to
14 provide notice of any purported Policy Default and Default Payment, and failure to
15 provide plaintiff with any meaningful ability to cure any purported Policy Default, were
16 unreasonable and without adequate justification and therefore constitute a breach of the
17 implied covenant of fair dealing, and bad faith.

18 45. Defendant's decision to cancel the Policy constitutes bad faith because
19 defendant failed to credit plaintiff for its substantial performance of the Policy and, at
20 best, seized upon minor breaches, if any, that plaintiff easily could have cured if it had
21 been given notice of such alleged breaches, as a pretext in order to terminate the Policy
22 for reasons completely unrelated to the purported failure of plaintiff to pay approximately
23 \$6,572 in additional payments as demanded by defendant.

1 46. Defendant's false, inconsistent and varying explanations for its decision to
2 cancel the Policy and its failure to reinstate the Policy constitute bad faith.

3 47. In refusing to reinstate the Policy, defendant referred to the so-called large
4 loans against the Policy, and stated that given such large loans, it would not reinstate
5 the Policy without re-underwriting the Policy. This reason for canceling the Policy is
6 inconsistent with the Policy itself, which explicitly permitted such loans. Moreover,
7 defendant's decision to treat policies against which loans have been issued differently
8 from other policies impermissibly discriminates among policyholders and policies and
9 constitutes bad faith.

10 48. In refusing to reinstate the Policy, defendant expressed its desire to re-
11 underwrite the Policy in 2009, when defendant in 2004 had issued the Policy upon the
12 life of a then 79-year old male. Defendant's claims of breach of the Policy were
13 pretextual in order to allow it the opportunity to re-underwrite—and perhaps decline—the
14 Policy now that the Insured Person was almost 84 years old. This pretextual reason for
15 canceling the Policy constitutes bad faith.

16 49. Defendant's practice of pretending to have its files unavailable within a
17 matter of days following an alleged lapse of an insurance policy prejudices the ability of
18 policyholders to establish coverage and constitutes bad faith.

19 50. Defendant's practice of communicating with policyholders without advising
20 them of a purported Policy Default, or advising them that their policy will lapse absent
21 an additional payment, constitutes bad faith.

22 51. Defendant's practice of sending only one notice of purported default to
23 policyholders, if any such notice were sent at all, and failing to send a second notice to

1 even those policyholders who make a substantial partial payment constitutes unfair
2 dealing and bad faith.

3 52. Defendant's false, inconsistent and varying claim that it had provided the
4 notice required under Section 8 of the Policy constitutes a breach of the implied
5 covenant of good faith and fair dealing, and bad faith.

6 53. During the investigation and evaluation of plaintiffs position, defendant
7 failed to give plaintiffs interests at least as much consideration as its own interests, and
8 thus constitutes bad faith.

9 54. Defendant's failure to return all amounts due plaintiff under the Policy
10 constitutes bad faith.

11 55. As a result of the wrongful actions of defendant, plaintiff has not obtained
12 all of the benefits to which it is entitled under the Policy, as well as all benefits to which it
13 would have been entitled in the future. Plaintiff has also suffered extra-contractual
14 damages such as attorneys' fees, court costs and foreseeable economic losses as a
15 consequence of defendant's wrongful actions.

16 56. Defendant acted with malice, moral turpitude, wantonness, willfulness or
17 reckless indifference to the rights of others. Defendant had actual knowledge of the
18 wrongfulness of its conduct and the high probability that injury or damage to the plaintiff
19 would result and, despite that knowledge, intentionally pursued the course of conduct
20 that resulted in such injury.

21 57. Defendant's breaches have caused plaintiff to sustain damages in an
22 amount to be proven at trial, but in excess of the jurisdictional minimum required in this
23 Court.

VI. THIRD CAUSE OF ACTION –BAD FAITH

58. Plaintiff incorporates by reference all of the allegations set forth in paragraphs 1 through 57 as though fully set forth herein.

59. At all relevant times herein, defendant had a duty to plaintiff to conduct itself in good faith respecting these insurance obligations. That duty flowed from the Policy and from the statutory and regulatory obligations set forth elsewhere in this Complaint.

60. As a result of the wrongful actions of defendant, plaintiff has suffered damages including, inter alia, attorneys' fees, court costs and foreseeable economic losses.

61. Defendant acted with malice, moral turpitude, wantonness, willfulness or reckless indifference to the rights of others. Defendant had actual knowledge of the wrongfulness of its conduct and the high probability that injury or damage to the plaintiff would result and, despite that knowledge, intentionally pursued the course of conduct that resulted in such injury.

62. Defendant's breaches have caused plaintiff to sustain damages in an amount to be proven at trial, but in excess of the jurisdictional minimum required in this Court.

VII. FOURTH CAUSE OF ACTION –VIOLATION OF THE CONSUMER PROTECTION ACT

63. Plaintiff incorporates by reference all of the allegations set forth in paragraphs 1 through 62 as though fully set forth herein.

64. Defendant has committed unfair and deceptive business acts or practices prohibited by the Washington Consumer Protection Act, RCW Chapter 19.86 in that it has committed the acts of malfeasance or misfeasance set forth in this Complaint.

65. Defendant's misconduct constituted unfair or deceptive acts or practices occurring in the conduct of defendant's trade or commerce that affected the public and proximately caused injury to plaintiff.

66. Defendant's wrongful conduct has caused plaintiff to sustain damages in an amount to be proven at trial, but in excess of the jurisdictional minimum required in this Court. Plaintiff is entitled to an award of compensatory damages, consequential and incidental damages, trebled as provided by statute, together with interest, reasonable attorneys' fees and costs as permitted by law.

VIII. FIFTH CAUSE OF ACTION –VIOLATION OF THE WASHINGTON INSURANCE CODE

67. Plaintiff incorporates by reference all of the allegations set forth in paragraphs 1 through 66 as though fully set forth herein.

68. For the reasons set forth above, defendant violated the Washington Insurance Code, RCW Title 48, and particularly Chapter 48.30 thereof, and as well as the Washington Insurance Commissioner's regulations related thereto at WAC Chapter 284-30.

69. Defendant's wrongful conduct has caused plaintiff to sustain damages in an amount to be proven at trial, but in excess of the jurisdictional minimum required in this Court. Plaintiff is entitled to an award of damages, trebled as provided by statute, together with interest, reasonable attorneys' fees and costs as permitted by law

1 **IX. SIXTH CAUSE OF ACTION – UNJUST ENRICHMENT**

2 70. Plaintiff incorporates by reference all of the allegations set forth in
3 paragraphs 1 through 69 as though fully set forth herein.

4 71. Defendant's improper actions, as described above, have resulted in its
5 unjust enrichment. Defendant should not be allowed to retain the benefits that it
6 unjustly received at plaintiff's expense. Equity and good conscience require that such
7 things of value be restored to plaintiff.

8 72. Defendant should be made to pay to plaintiff in money damages the sums
9 of all such benefits.

10 73. In the alternative, defendant should be compelled to disgorge, into a
11 common fund for the benefit of plaintiff, all proceeds unlawfully or inequitably received
12 by it as a result of its participation in the conduct described above.

13 **X. SEVENTH CAUSE OF ACTION – CONVERSION**

14 74. Plaintiff incorporates by reference all of the allegations set forth in
15 paragraphs 1 through 73 as though fully set forth herein.

16 75. Defendant's improper actions, as described above, constitute conversion.

17 76. Without authorization or legal right, defendant wrongfully cancelled the
18 Policy. These acts constitute dominion wrongfully exerted over plaintiff's property in
19 denial of, and inconsistent with, plaintiff's right in that property.

20 77. Defendant's wrongful conduct has caused plaintiff to sustain damages in
21 an amount to be proven at trial, but in excess of the jurisdictional minimum required in
22 this Court.
23

XI. EIGHTH CAUSE OF ACTION –EQUITABLE ESTOPPEL

78. Plaintiff incorporates by reference all of the allegations set forth in paragraphs 1 through 77 as though fully set forth herein.

79. By the conduct described above, defendant is estopped from denying its obligations under the Policy to continue coverage upon the life of the Insured Person.

80. Plaintiff rightfully relied upon the words and deeds of the defendant and in so relying, changed its position to its injury.

81. Through its actions and omissions, defendant led plaintiff to believe that the Policy was not in Policy Default and that no further payments need be made prior to May 2009. Defendant's representations were false.

82. Defendant intended and expected plaintiff to rely upon defendant's false representations.

83. Plaintiff relied upon defendant's misrepresentations which caused plaintiff to change its position to its substantial detriment.

84. Plaintiff would be prejudiced by its reliance on the defendant's representations and omissions if defendant is allowed to deny the truth thereof.

85. Defendant's wrongful conduct has caused plaintiff to sustain damages in an amount to be proven at trial, but in excess of the jurisdictional minimum required in this Court.

1 **XII. NINTH CAUSE OF ACTION –NEGLIGENT MISREPRESENTATION**

2 86. Plaintiff incorporates by reference all of the allegations set forth in
3 paragraphs 1 through 85 as though fully set forth herein.

4 87. In Defendant's communications with the plaintiff, defendant misled plaintiff
5 into believing that the Policy was not in Policy Default and that no payment needed to
6 be made prior to May 2009. Defendant's representations were false.

7 88. Defendant intended and expected plaintiff to rely upon defendant's false
8 representations.

9 89. Plaintiff relied upon defendant's misrepresentations which caused plaintiff
10 to change its position to its substantial detriment.

11 90. Defendant's breaches have caused plaintiff to sustain damages in an
12 amount to be proven at trial, but in excess of the jurisdictional minimum required in this
13 Court.

14 **XIII. TENTH CAUSE OF ACTION – DECLARATORY JUDGMENT**

15 91. Plaintiff incorporates by reference all of the allegations set forth in
16 paragraphs 1 through 90 as though fully set forth herein.

17 92. This matter is ripe for a declaratory judgment pursuant to R.C.W. 7.24
18 because disputes exist between the parties regarding their respective rights and
19 obligations with respect to the Policy. A declaratory judgment is proper to determine the
20 parties' rights and obligations with respect to the Policy.

21 93. Plaintiff is entitled to a declaratory judgment that (i) defendant committed
22 material breaches of the Policy; (ii) defendant breached the covenant of good faith and
23

1 faith dealing; (iii) defendant engaged in bad faith; (iv) defendant breached the
 2 Washington Consumer Protection Act; (v) defendant breached the Washington
 3 Insurance Code; (vi) defendant has been unjustly enriched; (vii) defendant engaged in
 4 conversion; (viii) defendant is equitably estopped from denying coverage under, and/or
 5 reinstatement of, the Policy; (ix) defendant negligently induced plaintiff to refrain from
 6 paying the premiums demanded by defendant and thereby induced the purported lapse
 7 of the Policy; and (x) that the Policy is in full force and effect, and the defendant's
 8 cancellation of the Policy was wrongful.

9 **XIV. PRAYER FOR RELIEF**

10 **WHEREFORE** Plaintiff respectfully requests that this Court grant relief as follows:

11 A. Issuance of a judgment declaring that: (i) defendant committed material
 12 breaches of the Policy; (ii) defendant breached the covenant of good faith and fair
 13 dealing; (iii) defendant engaged in bad faith; (iv) defendant breached the Washington
 14 Consumer Protection Act; (v) defendant breached the Washington Insurance Code; (vi)
 15 defendant has been unjustly enriched; (vii) defendant engaged in conversion; (viii)
 16 defendant is equitably estopped from denying coverage under, and/or reinstatement of,
 17 the Policy; (ix) defendant negligently induced plaintiff to refrain from paying the
 18 premiums demanded by defendant and thereby induced the purported lapse of the
 19 Policy; and (x) the Policy is in full force and effect, and that defendant's cancellation of
 20 the Policy was wrongful.

21 B. Compensatory damages in an amount to be determined at trial;

22 C. Under the Washington Consumer Protection Act, compensatory damages,
 23 consequential and incidental damages, trebled as provided by statute, together with

1 interest, reasonable attorneys' fees and costs as permitted by law;

2 D. Under the Washington Insurance Code, compensatory damages,
3 consequential and incidental damages, trebled as provided by statute, together with
4 interest, reasonable attorneys' fees and costs as permitted by law.

5 E. Issuance of an Order directing the Defendant to account for all gains,
6 profits and advantages derived from its wrongful acts and omissions;

7 F. Issuance of an Order directing that all gains, profits and advantages
8 derived by defendant from its wrongful acts and omissions be deemed to be held in a
9 constructive trust for the benefit of plaintiff;

10 G. Issuance of a judgment awarding U.S. Bank its costs and expenses in this
11 litigation, including but not limited to its attorneys' fees, expert fees, and other costs and
12 disbursements;

13 H. Pre-judgment and post-judgment interest; and

14 I. Such other and further relief as the Court may deem just and proper.

15 **XV. DEMAND FOR JURY TRIAL**

16 Plaintiff demands a trial by jury on all issues so triable.

1 DATED this 6th day of August, 2010.

2 STAFFORD FREY COOPER

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